IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS BLANCK, : CIVIL ACTION

Plaintiff, :

NO. 01-1402

v. :

:

EXETER SCHOOL DISTRICT, LINDA : MASTURKIEWICZ, in her individual and :

official capacity as Vice Principal of the

Exeter High School; JEFFREY KELLER,

in his individual and official capacity as :

Principal of the Exeter High School, and NICHOLAS J. CORBO, in his individual

and official capacity as superintendent of :

the Exeter Township School District, :

Defendants. :

MEMORANDUM

BUCKWALTER, J. October 2, 2002

Presently before the Court is Defendants' Motion to Dismiss Plaintiff's Amended Complaint. For the reasons stated below, Defendants' Motion is **GRANTED**.

I. BACKGROUND

Plaintiff, Nicholas Blanck ("Blanck" or "Plaintiff"), now an adult, was formerly enrolled at the Exeter Township High School for the 1997-1998 and 1998-1999 school years. At the time of Blanck's enrollment, Defendant Linda Masturkiewicz ("Masturkiewicz") was the Vice Principal of Exeter High School, Defendant John Keller ("Keller") was the Principal of Exeter High School, and Defendant Nicholas Corbo ("Corbo") was the Superintendent of the Exeter School District.

In his Amended Complaint, Blanck alleges that he is a disabled student pursuant to the Individuals with Disabilities in Education Act ("IDEA"), because he suffers from Attention Deficit Disorder ("ADD"). In fact, Blanck's status as a disabled student is still undetermined. However, believing that Blanck needed a special education program to accommodate his special needs, Blanck's father met with Keller to discuss such a program on March 17, 1999. Following this meeting, Defendants Masturkiewicz, Keller and Corbo all refused to respond to requests for a specialized educational program for Blanck.

Blanck alleges that, throughout his years as a student at Exeter, Keller and Masturkiewicz repeatedly told Blanck that he could not learn, and that it was a waste of time for him to be in school. Furthermore, Blanck claims that he was searched by Masturkiewicz during school hours, on several occasions. Blanck also alleges that, on December 16, 1998, Defendants called the police and falsely reported that Blanck possessed a gun. Ultimately, Blanck left Exeter High School, and he currently does not wish to continue his education. Blanck is seeking monetary damages for the alleged incidents between 1997 and 1999.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6)¹ is granted where the plaintiff has failed to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). This motion "may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." <u>Maio v.</u>

^{1.} Defendants failed to specifically list any particular rule pursuant to which their Motion to Dismiss should be granted. Since Defendants' Motion most closely resembled a motion to dismiss pursuant to Rules 12(b)(6) and 12(b)(1), these were the rules under which Defendants' Motion was reviewed.

Aetna, Inc., 221 F.3d 472, 481 (3d Cir. 2000). While the court must accept all factual allegations in the complaint as true, it "need not accept as true 'unsupported conclusions and unwarranted inferences'". Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 184-85 (3d Cir. 2000), citing City of Pittsburgh v. West Penn Power Co., 147 F.3d 256, 263 n.13 (3d Cir. 1997). In a 12(b)(6) motion, the defendant bears the burden of persuading the court that no claim has been stated. Gould Elecs., Inc. v. United States, 220 F.3d 169, 178 (3d Cir. 2000).

A motion to dismiss pursuant to Rule 12(b)(1) is granted where the plaintiff lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "[T]he threshold to withstand a motion to dismiss under Fed. R. Civ. P. 12(b)(1) is . . . lower than that required to withstand a Rule 12(b)(6) motion." Lunderstadt v. Colafella, 885 F.2d 66, 70 (3d Cir. 1989). A motion to dismiss under Rule 12(b)(1) succeeds only where "the right claimed [by the plaintiff] is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy". Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1280-81 (3d Cir. 1993), citing Kulick v. Pocono Downs Racing Ass'n, 816 F.2d 895, 899 (3d Cir. 1987). The plaintiff has the burden of persuading the court that it has jurisdiction in a factual 12(b)(1) claim. Gould Elecs., Inc., 220 F.3d 169, 178 (3d Cir. 2000). Where there is a question of fact in determining whether a court has jurisdiction, the court may consider more than the pleadings, because the court's essential power to hear the case is at issue. Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir. 1997). "[A] trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Id.

III. DISCUSSION

In Counts I and II of Plaintiff's Amended Complaint, Plaintiff has alleged the deprivation of his constitutional rights, including violations of the First and Fourth Amendments, and violations of the Equal Protection Clause of the Fourteenth Amendment. In Count III, Plaintiff has alleged violations of Title IX and of federal and state regulations. In Count V, Plaintiff alleges pendant state claims under the Pennsylvania Constitution. Finally, in Count VI² of Plaintiff's Amended Complaint, he requests costs and attorney's fees.

Defendants' have moved to dismiss Counts I and II on the ground that Plaintiff has not exhausted his administrative remedies under the IDEA. Although the IDEA provides for a federal cause of action, it mandates that plaintiffs first exhaust their administrative remedies before they be allowed to file civil suits in the federal courts. 42 U.S.C. 1415(*l*). "A plaintiff's failure to exhaust administrative remedies under the IDEA deprives a court of subject matter jurisdiction." Polera v. The Bd. of Educ. of the Newburgh Enlarged City School District, 288 F.3d 478, 483 (2d Cir. 2002). Despite this statutory requirement, where the relief sought in a civil suit is not available in an IDEA administrative proceeding, exhaustion of such administrative proceedings would be futile and is not required. W.B. v. Matula, 67 F.3d 484, 495 (3d Cir. 1995).

However, exhaustion is not futile where the factual record is not fully developed and there are still evidentiary disputes to be resolved. <u>Id.</u> at 496. Where potentially disabled

^{2.} Although Plaintiff's Amended Complaint only contains five counts, Count IV is conspicuously missing. Therefore, the Amended Complaint skips from Count III to Count V, and concludes with Count VI.

children have not yet been evaluated, classified or placed in proper educational programs, the exhaustion of administrative proceedings serves a very significant purpose. <u>Id.</u>

Under the IDEA procedural scheme, aggrieved parties first present their complaints to administrative bodies that have expertise in the area of educating disabled children; upon exhaustion of the administrative procedures, they are entitled to bring their complaints to a court of competent jurisdiction for review. The [IDEA] does not envision courts as the factfinders in the first instance and provides the due process procedures so that state and local agencies can take primary responsibility for formulating the education to be accorded to a handicapped child.

Lindsley v. The Girard Sch. Dist., 213 F.Supp.2d 523, 535-36 (W.D. Pa. 2002).

Plaintiff alleges that he is only seeking monetary relief from Defendants, and since administrative proceedings do not allow for monetary relief, exhaustion would be futile in this situation. However, in primary dispute between the parties is whether Plaintiff is "disabled" as defined by the IDEA.³ Without a determination of whether Plaintiff should be classified as disabled, neither party can succeed in a civil suit. "One of the principal reasons for the exhaustion requirement [is] to allow the administrative body with the relevant expertise to create an evidentiary record prior to judicial review." Lindsley, 213 F.Supp.2d at 535. Exhaustion of administrative proceedings is essential in this matter so that the fundamental question of whether Plaintiff has a disability within the meaning of the IDEA can be determined by an appropriate administrative body, and so that a full factual record can be developed. See Matula at 496; Lindsley at 535;Richter v. The Sch. Dist. of the City of Erie, CIV.A. No. 01-152 Erie, 2002 U.S.

^{3.} The IDEA defines a child with a disability as "a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, . . . who, by reasons thereof, needs special education and related services." 20 U.S.C. § 1401(3)(A).

Dist. LEXIS 14703, at *15 (W.D. Pa. Mar. 25, 2002). For these reasons, Counts I and II of Plaintiff's Amended Complaint are dismissed.

In Count III of Plaintiff's Amended Complaint, he alleges that Defendants have violated Title IX and federal and state regulations.⁴ Title IX provides that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Plaintiff has alleged no facts which could possibly indicate that Defendants discriminated against him based upon his sex. "Although the pleading requirements . . . are very liberal, more detail is often required than the bald statement by plaintiff that he has a valid claim of some type against defendant." Krantz v. Prudential Invs. Fund Mgmt. LLC, No. 02-1266, 2002 U.S. App. LEXIS 18041, at *5 (3d Cir. Aug. 30, 2002), citing 5A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1357 at 318 (2d ed. 1990). Here, Plaintiff has made such a bald statement, alleging a Title IX violation, without providing a single fact to support it. Without a factual basis for his claim of sexual discrimination, Plaintiff's Title IX claim cannot survive. Accordingly, Count III of Plaintiff's claim is dismissed.

Count V of Plaintiff's Complaint alleges pendent state claims under the Pennsylvania Constitution. "The district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. 1267(a). Plaintiff alleges claims under the

^{4.} Plaintiff does not allege which federal and state regulations are violated nor does he allege facts to support any violation. Therefore, this portion of Count III is not considered.

Pennsylvania Constitution, but he fails to allege any particular section or clause which Defendants have violated. Without alleging particular violations, it is impossible to determine whether the federal and state claims are so related to one another that they form part of the same case or controversy. Plaintiff's state constitutional claims must be dismissed for his failure to specify what these claims are. See Kevin M. v. Bristol Township Sch. Dist., 2002 WL 73233, at *12 (E.D. Pa. Jan. 16, 2002). Count V of Plaintiff's Amended Complaint is dismissed.

In Count VI, Plaintiff alleges that he has incurred compensable costs and attorney's fees as a result of Defendants' actions. Plaintiff has improperly set forth a separate count for costs and attorney's fees. A request for such costs and fees is to be a prayer for relief under other claims, it is not to be made in a separate count. Accordingly, Count VI is dismissed.

IV. CONCLUSION

Plaintiff has not exhausted the administrative proceedings available to him under the IDEA. As such, Plaintiff has not allowed for a determination of his disability classification or for a full factual record to be developed. Furthermore, Plaintiff has not asserted any facts from which it could be inferred that Defendants' sexually discriminated against him, nor has he pleaded any specific state constitutional violations by the Defendants. Accordingly, Defendants' Motion to Dismiss is **GRANTED**.

An appropriate order follows.

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Defendants. :

ORDER

AND NOW, this 2nd day of October, 2002, upon consideration of Defendants Exeter School District's, Linda Masturkiewicz's, Jeffrey Keller's and Nicholas J. Corbo's Motion to Dismiss Plaintiff's Amended Complaint (Docket No. 15), and Plaintiff Nicholas Blanck's response thereto, it is hereby **ORDERED** that Defendants' Motion to Dismiss is **GRANTED**, and Plaintiff's Amended Complaint is **DISMISSED** in its entirety.

This case is **CLOSED**.

BY THE COURT:
RONALD L. BUCKWALTER, J.